

STATE OF MICHIGAN
COURT OF APPEALS

RONALD CUSWORTH and LEONA
CUSWORTH,

UNPUBLISHED
April 10, 2014

Plaintiffs-Appellants,

v

No. 311207
Macomb Circuit Court
LC No. 2012-001340-CH

FANNIE MAE, a/k/a FEDERAL NATIONAL
MORTGAGE ASSOCIATION,

Defendant-Appellee.

Before: STEPHENS, P.J., and SAAD and BOONSTRA, JJ.

PER CURIAM.

Plaintiffs appeal by right from the trial court's order granting defendant's motion for summary disposition under MCR 2.116(C)(8) and (C)(10). We affirm.

Plaintiffs filed suit against defendant on March 23, 2012, alleging that defendant's assignee, Green Tree Services, unlawfully conducted foreclosure proceedings on plaintiffs' property even though plaintiffs were not in default on their mortgage. In November 2010, Green Tree had informed plaintiffs that a past-due balance on their mortgage account had to be paid by November 30, 2010, in order to cure the default. Plaintiffs attempted to cure the default, but defendant ultimately returned the payment to plaintiffs, claiming it was submitted too late to cure the default.

Defendant advertised the property as a foreclosure sale for four weeks. The property was sold in a foreclosure sale on January 7, 2011, subject to a one-year redemption period. Plaintiffs made no attempt to redeem the property during the redemption period, which expired on January 7, 2012. On February 2, 2012, Green Tree initiated summary proceedings for possession of the property in district court. On March 23, 2012, plaintiffs filed their complaint to set aside the foreclosure and quiet title. Before the close of discovery, defendant moved for summary disposition of the complaint pursuant to MCR 2.116(C)(8) and MCR 2.116(C)(10).

This Court reviews de novo a trial court's decision on a motion for summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). MCR 2.116(C)(8) provides for summary disposition when "[t]he opposing party has failed to state a claim on which relief can be granted." A motion under MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings alone. *Bailey v Schaaf*, 494 Mich 595, 603; 835 NW2d 413 (2013). A motion for

summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Joseph v Auto Club Ins Ass'n*, 491 Mich 200, 206; 815 NW2d 412 (2012). Summary disposition is properly granted under MCR 2.116(C)(10) when, “[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law.”

The procedure for mortgage foreclosure by advertisement is governed by MCL 600.3201 *et seq.* MCL 600.3236 in pertinent part provides:

Unless the premises described in such deed shall be redeemed within the time limited for such redemption as hereinafter provided, such deed shall thereupon become operative, and shall vest in the grantee therein named, his heirs or assigns, all the right, title, and interest which the mortgagor had at the time of the execution of the mortgage[.]

MCL 600.3236 divests a mortgagor of “all [his] right, title, and interest in and to the property at the expiration of [his] right of redemption.” *Piotrowski v State Land Office Bd*, 302 Mich 179, 187; 4 NW2d 514 (1942). “The law in Michigan does not allow an equitable extension of the period to redeem from a statutory foreclosure sale in connection with a mortgage foreclosed by advertisement and posting of notice in the absence of a clear showing of fraud, or irregularity.” *Schulthies v Barron*, 16 Mich App 246, 247-248; 167 NW2d 784 (1969).

In the present case, plaintiffs made no effort to redeem the property during the 12-month redemption period. As the case law cited above makes clear they were required to present any such argument(s) within the redemption period. Instead, plaintiffs initiated this action more than two months after the redemption period had expired. In *Piotrowski*, 302 Mich at 188, the Supreme Court found that, because the plaintiffs brought their complaint after the expiration of the redemption period, dismissal was warranted for failure to state a cause of action regardless of the legal or factual merit of the complaint. Similarly, plaintiffs here failed to state a cause of action on which relief can be granted, and dismissal under MCR 2.116(C)(8) was proper.

Because plaintiffs made no effort to redeem the property during the redemption period, “there is no fair likelihood that further discovery will yield support for [their] position.” *Liparoto Const, Inc v General Shale Brick, Inc*, 284 Mich App 25, 33-34; 772 NW d 801 (2009). None of the cases cited by plaintiffs stand for the proposition that a mortgagor’s right to challenge a foreclosure sale lasts beyond the redemption period. Under Michigan law, once the redemption period expired, plaintiffs lost their right to bring any legal claims with respect to the property. Dismissal of the present action was thus warranted under MCR 2.116(C)(10) as well.

Affirmed.

/s/ Cynthia Diane Stephens
/s/ Henry William Saad
/s/ Mark T. Boonstra